IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 18, 2007 Session

# RICHARD MICHAEL EAVES v. JUDY J. (LEISTNER) EAVES

**Appeal from the Circuit Court for Hamilton County**
**No. 06-D-375, Division II Samuel H. Payne, Judge**

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**No. E2006-02185-COA-R3-CV - FILED NOVEMBER 30, 2007**

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The trial court's judgment granted a divorce to Judy J. (Leistner) Eaves ("Wife") and Michael Eaves ("Husband"). Wife appeals. She disputes the trial court's rulings with respect to allocation of marital debt, alimony, child support, and their children's tax exemptions. On appeal, she also requests a change in the residential parenting schedule and a larger award of attorney's fees. We hold that Wife fails to demonstrate that the trial court either abused its discretion or committed an error of law with respect to any of these issues. Accordingly, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Grace E. Daniell for the appellant, Judy J. (Leistner) Eaves.

Richard Michael Eaves, appellee, Pro Se.

## OPINION

I.

Husband and Wife married in 1991. They have two children, who were 10 and 12 years old at the time of the trial in 2006. The children have always been home-schooled by Wife, who stayed at home throughout the marriage, except for working three hours per week at the YMCA since 2000. Wife began working more substantial hours at the YMCA in early 2006, after Husband announced his intention to divorce her. Husband was the primary wage earner throughout the parties' marriage. He has worked in the real estate business for approximately 13 years, and is currently employed as a realtor with RE/MAX. He is paid on commission, and as such, his income tends to vary greatly from year to year.

Divorce proceedings were commenced in February 2006. Both parties claim the other is at fault for the breakup of the marriage. We will not recite their allegations in detail here. Suffice it to say, we have reviewed the record and are satisfied that the evidence does not preponderate against the trial court's holding that the parties share in the blame.

The court declared the parties divorced in August 2006 and awarded Wife monthly alimony of $10 and monthly child support of $587. It granted Husband the tax exemption for one child and Wife the tax exemption for the other child. The court named Wife the primary residential parent of both children, which Husband had stipulated to, and adopted a parenting schedule that has the children with Husband every Thursday afternoon through Friday morning, every other weekend from Friday afternoon until Monday morning, four uninterrupted weeks during the summer, alternating spring and fall breaks, alternating portions of Christmas break, and various other holidays, generally on an alternating year-to-year basis.

A key issue in this case is the parties' debts, which total $139,329, including $60,358 in credit card debts. Throughout the trial, the court referred to this debt and opined that it was foolish for the parties to be arguing over money when, in the court's view, neither had any property worth fighting over and both desperately needed to overhaul their finances. In its memorandum opinion, the court stated the following:

> The total debts, I looked at those things. They are horrible. He's to pay 66 percent of them. She's to pay 33 percent of them.
>
> * * *
>
> And I'm going to give you some free advice. The Appellate Court might not like this, but I'm going to tell you. You ought to get together and sit down and work out some way to enter some kind of joint bankruptcy and get out from under all this stinking debt because you're never going to pay it. It's going to deprive you. It's going to deprive her. It's going to deprive both your children of everything.
>
> Let me tell you something about those credit cards. Remember, they're just like getting on heroin. You get to using them and they'll go on and on. The three you've got now I was looking at, you cannot live long enough to pay them off.
>
> * * *
>
> Y'all are just such good people. Your life is in a shambles. The number one cause of divorce is finances. That's the number one thing. It's not watching pornographic movies and crap like that. It's finances.

> Everything you get is gone and you're so far in debt. The pressure is so bad, I don't see how you make it, I really don't, but there's a way out if you get together and get over fighting with each other and sit down and try to work this thing out.

With regard to the credit card debts, Wife argues that they are Husband's responsibility, as, according to her, she never had access to the cards. She suggests that Husband spent money recklessly. Husband denies these allegations and says he used the cards to pay bills and otherwise spend for the good of the family.

Both parties asserted at trial that their monthly expenses are significantly greater than their monthly incomes. Wife's filing reflects expenses of $1,973 unfunded by her net pay. Husband's statement shows unfunded expenses of $2,306 – and that was *without* considering credit card payments. Wife claims that Husband duplicated some expenses, counting them as both business and personal expenses, but even if this is true, it remains clear that Husband is significantly "in the red."

Another disputed matter is the proper accounting of Husband's income. Specifically, Wife takes issue with the decrease in Husband's income since the divorce proceedings began. Husband contends that the drop is due largely to an order of protection, issued in March 2006, which barred him from attending Bayside Baptist, the church that the parties had previously attended together. According to Husband, this order negatively impacted his real estate sales, as a significant portion of his client base came from Bayside Baptist – which is a large church, with approximately 3,000 members. Husband testified that he "lost some clients" as a direct result of the order of protection, and "had to start my business all over again," and that the decrease in his real estate sales through August 2006 was largely the result of this problem. He estimated that it would take him six months to rebuild his client base.

Wife raises six issues; we will address each of them in turn. Additional pertinent facts will be discussed where relevant to the various issues.

With regard to all issues, our review is *de novo* upon the record of the proceedings below. However, that record comes to us with a presumption that the trial judge's factual findings are correct. Tenn. R. App. P. 13(d). We must honor this presumption unless we find that the evidence preponderates against those findings. ***Id.***; ***Hass v. Knighton***, 676 S.W.2d 554, 555 (Tenn. 1984). "Issues pertaining to the trial court's divorce award, the division of the marital estate, and the assessment of court costs and attorney's fees are questions of fact." ***Hicks v. Hicks***, No. M2006-00082-COA-R3-CV, 2007 WL 1757063, *1 (Tenn. Ct. App. M.S., filed June 18, 2007). "We review these findings *de novo* upon the record under an abuse of discretion standard." ***Id***. Under such a standard,

> a trial court's ruling "will be upheld so long as reasonable minds can disagree as to [the] propriety of the decision made." ***State v. Scott***, 33 S.W.3d 746, 752 (Tenn. 2000); ***State v. Gilliland***, 22 S.W.3d 266,

> 273 (Tenn. 2000). A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." ***State v. Shirley***, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. ***Myint v. Allstate Ins. Co.***, 970 S.W.2d 920, 927 (Tenn. 1998).

***Hicks***, 2007 WL 1757063, at *1. There is no presumption of correctness with respect to the trial court's conclusions on matters of law, ***Taylor v. Fezell***, 158 S.W.3d 352, 357 (Tenn. 2005), or to its application of law to the facts, ***State v. Thacker***, 164 S.W.3d 208, 248 (Tenn. 2005), or to "conclusions that are based on undisputed facts," ***Hall v. Houston***, No. M2002-01371-COA-R3-CV, 2003 WL 21688578, at *3 (Tenn. Ct. App. M.S., filed July 21, 2003).

II.

Wife argues that Husband should be responsible for all of the couple's credit card debt, rather than only two-thirds of it as decreed by the court, because Husband "controlled the finances and the spending" and thus it was he who spent them into debt, while Wife "did not know what the money was used for." Wife asserts that Husband "handled the family finances and would not give [Wife] money or allow her access to any money on a consistent basis." She also states that she "only used a credit card maybe once a year."

As an initial matter, it is clear that the debts in question are marital, not separate, debts. "[D]ebts incurred by either or both spouses during the course of a marriage are properly classified as marital debt[.]" ***Alford v. Alford***, 120 S.W.3d 810, 811 (Tenn. 2003). Wife does not contest this point. Instead, she argues that Husband should be required to pay the parties' marital credit card debt under the ***Alford*** test, which states as follows:

> In allocating marital debts, trial courts should consider the following four factors: (1) the debt's purpose; (2) which party incurred the debt; (3) which party benefitted from incurring the debt; and (4) which party is best able to repay the debt.

***Id.*** These factors are designed to "insure the fairest possible allocation of debt" and "protect the spouse who did not incur the debt from bearing responsibility for debts that are the result of personal excesses of the other spouse." ***Id.*** at 814.

Wife had the opportunity at trial to convince the court below that the ***Alford*** factors militated in favor of allocating all the credit card debt to Husband. She failed to do so, and we must accord the trial court's factual finding on this issue a presumption of correctness. The presumption is particularly strong because witness credibility necessarily played a key role in the court's decision. Husband testified that he routinely gave Wife money when she asked for it, that she had access to

the credit cards, and that the credit card expenses he charged were for legitimate, non-frivolous purposes, to benefit the family as a whole and not Husband in particular. Wife testified otherwise. The trial court was in the best position to sift through this conflicting testimony and reach a decision, and it decided that Husband should be responsible for most, but not all, of the debt. "The trial court is uniquely positioned to observe the manner and demeanor of witnesses, and so appellate courts accord particular deference to trial court findings that depend upon weighing the value or credibility of competing oral testimony." ***Fell v. Rambo***, 36 S.W.3d 837, 846 (Tenn. Ct. App. 2000). The evidence does not preponderate against the court's findings, and thus we will not disturb them.

III.

Wife argues next that the court should have granted her alimony *in futuro* "in an amount that is substantially more" than the nominal alimony of $10 per month that the court awarded. The court said it chose the $10 figure because Husband "can't pay anything else" but "[y]ou've got to put a little something in there" so that it can be raised in the event of changed circumstances in the future. Wife contends that the alimony should have been higher now under the factors listed in Tenn. Code Ann. § 36-5-121(i) and recited in ***Crocker v. Crocker***, No. W2006-00353-COA-R3-CV, 2006 WL 3613591, *3 (Tenn. Ct. App. W.S., filed December 11, 2006), in particular the two factors that are "considered the most important," namely Wife's need and Husband's ability to pay. ***Id.***

Wife argues that Husband should pay more alimony because his "fault contributed to the breakdown of the marriage," and because Wife "suffered economic detriment for the benefit of the marriage" as a result of her decision to stay home to raise the children. Wife also contends that Husband's "earning capacity is much greater than his current income figures indicate" while Wife's "financial potential is severely limited compared to that of [Husband]." As support for this proposition, Wife cites Husband's 2005 gross income of $88,968 and his testimony that, at the time of trial, he was in the process of rebuilding his client base, but that he expected to finish doing so within six months. It appears that Wife is essentially arguing that the court should have treated Husband's relatively low 2006 income – as of August 2006, his year-to-date gross commissions were just $29,609, producing net commissions of $21,983 – as a temporary circumstance, and therefore should not have relied on it for purpose of calculating alimony or child support.

The trial court asserted that it was not relying on Husband's 2006 income. The final decree states as follows:

> The Court finds it is appropriate to review the [Husband's] wages for the last four and a half years and finds that the [Husband's] income averages $29,000 to $30,000 per year and that the [Wife's] income is $14,859.00 per year[.]

There are two problems with this statement. First, "$29,000 to $30,000 per year" is not an accurate reflection of Husband's income, either in 2006 or over "the last four and a half years."[1] Based on our review of the record, it appears to us that his net income is at least $35,500 per year.[2] Secondly, even if $29,000 to $30,000 were an accurate reflection of Husband's net income, the court would be comparing "apples to oranges" when it places this figure alongside Wife's asserted yearly income of $14,859. That is Wife's *gross* income, not her net. If the court's intention was to compare gross incomes, it should have used either Husband's average yearly gross income from 2002 through August 2006, which is approximately $64,400, or his annualized 2006 gross income, which is approximately $44,400. If, on the other hand, the court's intention was to compare net incomes, it should have stated Wife's income as $11,619 instead of $14,859.[3]

It is clear that the court's income calculations were flawed. However, our task on appeal is not simply to find an error by the trial court and automatically reverse on that basis. Our task is to determine more broadly whether the evidence preponderates against the end result such that the ruling in question falls outside of the range of the trial court's discretion. To that end, we calculated the parties' monthly incomes, as modified by the court's ruling, to determine whether the result is inequitable. We used the parties' 2006 incomes for this purpose because those figures most accurately reflect their respective financial situations at the time of trial. If Husband's income later returns to its 2002-2005 level, as Wife apparently anticipates, she can file for a modification. Indeed, the court's August 28 order specifically states that the alimony is rehabilitative "so that as his income increases, her alimony can be increased," and the September 22 decree orders the parties to "exchange income information every six months in order to determine whether it is appropriate for either party to seek modification of child support or temporary and rehabilitative alimony." However, for present purposes, it is both logical and just to rely upon the 2006 figures.

Husband's RE/MAX income statement through August 2006 reflects average monthly net commissions of $2,748. After deducting his $587 child support payment, his $10 alimony payment, and the $500 that he testified he pays in taxes each month, he is left with $1,651 per month to

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[1] Presumably the court is referring to the period of time from the beginning of 2002 through August 2006, which is the period for which the record contains the pertinent financial data.

[2] An exact calculation is impossible because the record does not reflect Husband's net income in either 2005 or 2006. It reflects his net *commissions* for these years, as stated on his RE/MAX statement, but because Husband does his own tax withholding, this figure is not the same as his net income. However, we can roughly estimate his net income based on the difference between his gross and net incomes in previous years. On average, between 2002 and 2004, his net income was approximately 59 percent of his gross income. The lowest percentage occurred in 2004, when his net was approximately 50 percent of his gross. Estimating liberally in Husband's favor so as to avoid overstating his income, we will use this latter figure. Thus, we estimate that Husband's 2005 gross income of $88,968 - easily his most successful year - produced a net income of approximately $44,500. We further estimate that his 2006 gross income through August of $29,609, annualized to $44,400, produced a net income of approximately $22,200. When averaged with the net incomes from 2002 through 2004, this produces a five-year average net income of $35,576.

[3] Wife's income affadavit states that she has $270 in monthly deductions from her $1,238.25 monthly gross income. This results in a monthly net of $968.25 and a yearly net of $11,619.00.

support himself and pay on his credit card obligations of some $40,000 plus. Wife, meanwhile, has a monthly net income of $968, which becomes $978 after alimony. This is the amount she has to support herself and pay on her obligations each month.

Obviously, $978 is substantially less than $1,651. However, courts are not obligated to equalize the parties' incomes through alimony. "An award of alimony in futuro is not a guarantee that the recipient spouse will forever be able to enjoy a lifestyle equal to that of the obligor spouse." ***Wright v. Quillen***, 83 S.W.3d 768, 773 (Tenn. Ct. App. 2002). Rather, "the purpose of spousal support is to aid the disadvantaged spouse to become and remain self-sufficient and, when economic rehabilitation is not feasible, to mitigate the harsh economic realities of divorce." ***Burlew v. Burlew***, 40 S.W.3d 465, 470-71 (Tenn. 2001) (quoting ***Anderton v. Anderton***, 988 S.W.2d 675, 682 (Tenn. Ct. App. 1998). The propriety and feasibility of accomplishing those objectives through alimony will inevitably vary from case to case. "There are no hard and fast rules for spousal support decisions." ***Anderton***, 988 S.W.2d at 682. "[T]he amount, if any, and type of alimony to be awarded is within the sound discretion of the trial court in view of the particular circumstances of the case, [and] appellate courts will not alter such awards absent an abuse of discretion." ***Crocker***, 2006 WL 3613591, at *3.

In this case, the trial court concluded that *both* parties were in dire straights economically, and it seems clear that this was the court's main reason for awarding only nominal alimony. The court stated that Husband "can't pay anything else," a consideration which is certainly consistent with the first factor listed in Tenn. Code Ann. § 36-5-121(i), the "relative earning capacity, obligations, needs, and financial resources of *each party*" (emphasis added). As noted previously, the "the obligor spouse's ability to pay" is considered one of the "most important" factors in alimony decisions, ***id.***, and it was the decisive factor here. After reviewing the record, we certainly cannot say that the evidence preponderates against the court's conclusion that Husband "can't pay anything else." His debt burden is enormous, his monthly expenses easily outstrip his present income, and it is frankly difficult – as the court stated repeatedly throughout the trial – to see how he can continue to make ends meet at his current income level. The same is true of Wife, and if Husband had the ability to help support her, a more substantial award of alimony would very likely be appropriate. However, the court justifiably found that, as of the time of trial, Husband did *not* have the ability to help support Wife. The evidence does not preponderate otherwise. If the parties' circumstances eventually change such that more substantial alimony would be appropriate, the award can be revisited, as contemplated by the court's decree. In the meantime, however, a court order cannot create money where none exists, and in this case the evidence supports the court's conclusion that Husband cannot pay Wife more than a nominal alimony while still meeting his own basic expenses. We therefore find that the court's decision on this issue was not an abuse of discretion.

IV.

In her third issue, Wife argues that Husband's $587 monthly child-support obligation is too low because the court miscalculated the number of days each parent spends with the children, and thus inputted the wrong numbers into the child-support formula. The court found that Husband has

the children for 155 days to Wife's 210. Wife says Husband only has them for 87 days, which would be below the threshold of 92 days at which Husband becomes eligible for a reduction in his child-support obligation under Rule 1240-2-4-.04(7)(g) of the Child Support Guidelines.

Under the permanent parenting plan adopted by the court, Husband has the children every other weekend from 3:30 p.m. on Friday until the start of school Monday morning, and every Thursday from 3:30 p.m. until the start of school Friday morning. He also gets them for four uninterrupted weeks each summer, one uninterrupted week for spring or fall break each year, and a portion of the Christmas holiday break. The plan also calls for the children to alternate various holidays between their parents. The disputed issue before us is the proper method of counting the partial days in the regular weekly and biweekly schedule, when the children spend part of the day with one parent and part with the other.

The record does not tell us exactly how the court arrived at the total of 155 days. However, in order for this total to be a mathematical possibility, the court must have found that the children are with Husband for five days out of every regular two-week period.

The regular schedule is followed for approximately 42 weeks per year. (Different schedules apply during six summer weeks, one week of spring break, one week of fall break, and approximately two weeks of Christmas break.) Five days per two-week period over the course of 42 weeks amounts to 105 days. Once spring, fall and summer breaks are counted, the number becomes 140. Depending on how the Christmas break and the various other holidays in the schedule are accounted for, it is possible to reach a total of 155 days, as the court did. It would not be possible to reach this number, however, if the regular schedule included four or fewer days per two-week period.

Wife disputes the court's finding of 155 days, claiming the children are only with Husband for two days every two weeks. We focus our analysis on whether the court erred in its accounting of the partial days.

Wife correctly points to Rule 1240-2-4-.02(10) of the Guidelines as providing the rule of decision for this issue. She apparently misreads it, however, for it is this very rule that defeats her position. The rule states:

> "Days" — For purposes of this chapter, a "day" of parenting time occurs when the child spends more than twelve (12) consecutive hours in a twenty-four (24) hour period under the care, control or direct supervision of one parent or caretaker. The twenty-four (24) hour period need not be the same as a twenty-four (24) hour calendar day. Accordingly, a "day" of parenting time may encompass either an overnight period or a daytime period, or a combination thereof.

Wife asserts that Husband "has parenting time every other weekend from Friday at 3:30 p.m. to the start of school Monday morning *which only counts as two days* under [the above-quoted rule]." (Emphasis added). This interpretation of the rule is simply incorrect. Under the rule, a stretch of time starting Friday at 3:30 p.m. and ending sometime Monday morning (let us say at 8:30 a.m.) counts as three days, since that stretch includes three 24-hour periods during which the children spend more than half of the period with Husband. For instance, the children are with Husband for 20.5 out of 24 hours between noon Friday and noon Saturday; for all 24 hours from noon Saturday until noon Sunday; and for another 20.5 out of 24 hours from noon Sunday until noon Monday. This method of counting is clearly allowable according to the plain meaning of Rule 1240-2-4-.02(10), which states explicitly that "[t]he twenty-four (24) hour period need not be the same as a twenty-four (24) hour calendar day."

In addition, Wife's accounting completely ignores the weekly Thursday arrangement, which has the children with Husband every week from 3:30 p.m. Thursday until Friday morning. Again, counting from noon Thursday until noon Friday, Husband is entitled to be credited with a "day" under Rule 1240-2-4-.02(10). One such day per week, plus a three-day weekend credit every other week, adds up to a total of five days every two weeks – not two days every two weeks, as Wife contends.

We recognize that this method of counting partial days could create analytical difficulties in some situations because it can result in double-counting. *See generally* ***Helton v. Helton***, No. M2002-02792-COA-R3-CV, 2004 WL 63478, *8 (Tenn. Ct. App. M.S., filed January 13, 2004). If each parent sought to maximize their claimed time under Rule 1240-2-4-.02(10), Wife could justifiably say the children are with her for 10 days every two weeks, just as Husband can justifiably say they are with him for 6 days every two weeks – a combined total of 16 days per 14-day period. However, in the context of this particular dispute, only Husband's total number of days is at issue, so we need not concern ourselves with that mathematical oddity. What matters for present purposes is that the trial court followed the Guidelines in calculating Husband's biweekly total as five days. We will not find error, let alone an abuse of discretion, where the court in fact followed the law, even if the result may arguably be mathematically illogical.

In light of everything stated above, we find that the court neither committed an error of law nor abused its discretion with regard to a factual judgment in determining that Husband spends 155 days with the children each year under the permanent parenting plan. We also find Wife's contention that child support should be recalculated based on a higher income figure for Husband to be without merit, for the same reasons stated in the preceding section regarding alimony. Therefore we find no basis to reverse the trial court's child support decision.

V.

Wife's fourth issue is based upon a misunderstanding of the Child Support Guidelines. She cites Rule 1240-2-4-.03(6)(b)(2)(ii) as controlling authority with regard to the allocation of the children's tax exemptions. This section states: "The alternate residential parent will file as a single

wage earner claiming one withholding allowance, and the primary residential parent claims the tax exemptions for the child." This rule is not implicated by the facts and issues in this case. It simply describes the methodology used to compute spouses' respective net incomes. Section 1240-2-4-.03(6) is titled "Assumptions and Methodology Used in the Income Shares Model," subsection (b) of that section is titled "Child Support Schedule Assumptions," and subsection (b)(2) is titled "Taxation Assumptions." The rule relied upon by Wife is not really a rule at all, but a mathematical "assumption" regarding an unrelated matter. It has no bearing on this issue.

"The decision of a trial court regarding the allocation of exemptions for minor children is discretionary and should rest on facts of the particular case." ***Chandler v. Chandler***, No. W2006-00493-COA-R3-CV, 2007 WL 1840818, *9 (Tenn. Ct. App. W.S., filed June 28, 2007). Although "[t]he custodial parent is generally entitled to claim the child as a dependent under the Internal Revenue Code," ***Id.*** (quoting ***Travis v. Travis***, No. E2000-01043-COA-R3-CV, 2001 WL 261543, *5 (Tenn. Ct. App. E.S., filed March 16, 2001)), this entitlement can be forfeited if the custodial parent releases it, and "[n]othing in the federal law prohibits state courts from exercising their power to order a party to execute the release that would enable the noncustodial parent to obtain the exemption." ***Id.*** (quoting ***Engel v. Young***, No. M2001-00734-COA-R3-CV, 2003 WL 1129451, *7 (Tenn. Ct. App. M.S., filed March 14, 2003)).

Wife has made no valid argument suggesting that the trial court abused its discretion in allocating the tax exemptions in this case, and we find no evidence to suggest that it did.

VI.

In her fifth issue, Wife argues that the regular weekly parenting schedule should be altered in some unspecified way to reduce interference with the children's home schooling, and also that the summer parenting schedule should be shared 50/50 between the parents, instead of 67/33 in favor of Husband. With regard to this latter point, Husband responds that he would be delighted with a 50/50 schedule, provided it covers the entire summer break rather than the six-week period that constitutes "summer" under the current plan and that forms the basis for Wife's calculation of a 67/33 split. Wife requests that the "summer" be expanded from six to eight weeks and that the children spend the final two weeks with her, uninterrupted, before returning to the regular schedule – thus producing a 50/50 split. However, neither party offers a valid basis to alter the trial court's ruling on this matter.

Wife asserts that the current weekly schedule "interferes with the children's home school program and causes too much interruption of their schoolwork during the week," but she offers no argument as to where and how the court erred in arriving at the current schedule. If Wife believes that a change of circumstance has arisen that makes the current weekly schedule impracticable, she can file a petition for modification. The same applies to her "request[] that the summer schedule be divided 50/50." She fails to state any basis for her request. We see nothing in the record to suggest that the evidence preponderates against the court's decision with regard to either the weekly schedule

or the summer schedule. We find that the trial court did not act outside the boundaries of its discretion in fashioning the parenting schedule.

VII.

Finally, Wife argues in her sixth issue that she should receive a greater award of attorney's fees "to avoid depletion of the assets she will rely on for future support." At the conclusion of trial, she requested $8,854 in attorney's fees; she was awarded $1,500. On appeal, she addresses this issue only briefly and directly ties it to her request for alimony, stating, "[t]he same factors that the Court considers in awarding alimony should be considered in an award of attorney fees." This is a correct statement of law. "Because an award of attorney's fees is akin to an award of alimony, the trial court should consider the same statutory factors to determine whether the award is appropriate." ***Eganey v. Eganey***, No. M2005-01755-COA-R3-CV, 2006 WL 3740792, *9 (Tenn. Ct. App. M.S., filed December 19, 2006). We see no reason, however, to conclude that the trial court failed to follow this directive. On the contrary, the trial court's reasoning for rejecting a larger award of attorney's fees is much the same as its reasoning for refusing to award more alimony:

> MS. DANIELL: She doesn't have the resources to --
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> THE COURT: What do you think he's got?
>
> MS. DANIELL: Well --
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> THE COURT: There ain't much difference between them, to tell you the truth.
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> MS. DANIELL: So is Your Honor denying --
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> THE COURT: I think she is entitled to some attorneys fees, but not anywhere close to what you're talking about. . . . He's not going to pay full attorney fees. I don't find that it's all his fault. I don't find it's all her fault. I think they both share in this problem.

The court's statement that "[t]here ain't much difference between them" and its rhetorical question, "What [resources] do you think he's got?" makes clear that, as with the alimony determination, the court felt that Husband was in no position to pay all of Wife's fees. Although it is true that an award of attorney's fees is "appropriate when the spouse seeking them lacks sufficient funds to pay his or her own legal expenses, or would be required to deplete his or her resources in order to pay these expenses," ***id.*** (citations and quotation marks omitted), it is equally true, again, that no court ruling can create money were none exists. On this issue, as with alimony, the trial court found that Husband was unable to assist Wife to a greater degree than the amount it awarded. It was well within its discretion to decide this. The court also acted within its discretion in declining to find Husband at fault for the divorce and award Wife more on that basis. Since decisions on attorney's

fees are subject to the court's broad discretion, and the evidence does not preponderate against this decision such that we could find an abuse of discretion, we affirm.

VIII.

The trial court's decision is affirmed in all respects. Costs on appeal are taxed to the appellant Judy J. (Leistner) Eaves. This case is remanded to the trial court for enforcement of that court's judgment and collection of costs assessed below, all pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE